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UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 THOMAS VINCENT GIRARDI,

17 Defendant.  
18

No. CR 22-47-JLS-1

GOVERNMENT'S REPLY IN SUPPORT OF  
EX PARTE APPLICATION FOR ACCESS TO  
THE UNREDACTED EXPERT REPORT OF  
DR. DIANA GOLDSTEIN

19 Plaintiff United States of America, by and through its counsel  
20 of record, the United States Attorney for the Central District of  
21 California and Assistant United States Attorneys Scott Paetty and Ali  
22 Moghaddas, hereby files its reply in support of the government's ex  
23 parte application for access to the unredacted expert report of Dr.  
24 Diana Goldstein.

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1        This reply is based upon the attached memorandum of points and  
2 authorities, the files and records in this case, and such further  
3 evidence and argument as the Court may permit.

4        Dated: June 21, 2023

Respectfully submitted,

5                                E. MARTIN ESTRADA  
6                                United States Attorney

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10                                /s/  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The purpose of the competency evaluation process in this case  
4 is to determine whether defendant Thomas Vincent Girardi  
5 ("defendant") has the requisite mental capacity to understand the  
6 nature of the proceedings against him and assist in his own defense.  
7 To that end, the parties, their respective experts, and most  
8 importantly, the Court, need access to the full set of information  
9 regarding the evaluations that have been conducted in order to reach  
10 an informed decision regarding defendant's competency. Defendant  
11 opposes providing the government with access to an unredacted copy  
12 of the report written by the government's neuropsychologist, Dr.  
13 Diana Goldstein, for two reasons: 1) the government has not shown a  
14 need to review the unredacted report or prejudice due to the  
15 redactions; and 2) review of the unredacted report would result in  
16 the prosecution team being tainted.

17 Defendant's opposition lack merit. First, the government's  
18 need to review Dr. Goldstein's unredacted report is premised on the  
19 necessity of providing the Court with a full set of facts and  
20 arguments so that the Court's ultimate decision on whether defendant  
21 is competent to stand trial is grounded in a complete review of the  
22 record. Indeed, the redacted portions seem to primarily involve  
23 defendant's responses to questions about the charges in the instant  
24 matter, which go to the crux of the proceedings. See Hoffman v.  
25 Arave, 455 F.3d 926, 927 (9th Cir. 2006) (finding defendant  
26 competent to stand trial if "he understands the proceedings and is  
27 able to assist counsel in his defendant"). Defendant's unilateral  
28 decision to redact what is arguably the most relevant sections of

1 the report directly impedes the government and Court's ability to  
2 fully assess the facts required for the Court's ultimate decision.

3 Second, defendant's claim of potential taint to the prosecution  
4 if allowed to view the information is wrong. Competency proceedings  
5 do not implicate the same concerns as grants of statutory immunity  
6 that give rise to Kastigar protections. Therefore, for the reasons  
7 discussed more fully below, the Court should grant the government's  
8 request for access to an unredacted copy of Dr. Goldstein's report,  
9 or, alternatively, the Court should allow an unredacted copy of the  
10 report to be shared with the government's neurologist, Dr. Ryan  
11 Darby, who is currently preparing his rebuttal expert report in this  
12 matter, and conduct an in camera review of the disputed redactions  
13 to determine whether the redacted material is being properly withheld  
14 from the prosecution.

## 15 **II. ARGUMENT**

### 16 **A. The Government and the Court Need Access to Dr. Goldstein's** 17 **Full Unredacted Report**

18 Defendant argues that the government has not identified a need  
19 for or prejudice resulting from receipt of a redacted report.  
20 However, until defendant's opposition (Dkt. 67), the government did  
21 not know what the redacted portions pertained to. Defendant's  
22 opposition cites two general categories of information that were  
23 redacted: 1) information regarding defendant's alcohol use; and 2)  
24 defendant's responses to questions regarding the underlying charges  
25 against him. (Id. at 3.) Even with this limited clarification, the  
26 potential relevance of the redacted information is clear.  
27 Defendant's ability to understand and discuss the charges against  
28 him relate directly to the evaluation of whether he understands

1 those charges and can assist his counsel in defending against them -  
2 - a burden the government bears. Hoffman, 455 F.3d at 927.

3 Moreover, beyond just the need for the government to review and  
4 evaluate the relevance of this redacted material, this need extends  
5 to the government's neurologist, Dr. Darby, who is currently  
6 completing his rebuttal expert report. Both the defense and  
7 prosecution experts should have access to the complete, unredacted  
8 reports of other experts in order to review, analyze, and further  
9 opine on any facts, findings, and conclusions. The prejudice in  
10 withholding that information from the government is that Dr. Darby,  
11 and by extension the Court, will not be basing conclusions regarding  
12 whether defendant is competent to stand trial on the full record.

13 **B. The Prosecution Team Will Not Be Tainted Upon Review of Dr.**  
14 **Goldstein's Unredacted Report**

15 As stated in the government's application, the Fifth Amendment  
16 does not shield statements made by defendant during the competency  
17 stage of criminal proceedings, unless the government seeks to  
18 affirmatively use those statements against defendant at trial in the  
19 absence of defendant's assertion of a mental status defense. (See  
20 Dkt. 65 at 3-4 (citing cases)<sup>1</sup>.) Defendant does not cite to any  
21 cases holding otherwise, nor distinguish the authority cited by the  
22 government. Instead, defendant alleges that the prosecution team  
23 might be tainted if granted access to the redacted information in  
24 Dr. Goldstein's report. Defendant appears to rest his concern on a  
25 desire to protect against the derivative use of any statement made  
26 by him during the competency proceedings. (See Dkt. 67 at 4-5).

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28 <sup>1</sup> Citations to page numbers in government filings refer to the  
page of the brief, as opposed to pages listed on the ECF header.

1           However, defendant cites no authority for the notion that his  
2 statements made during a competency evaluation are afforded the same  
3 treatment as statements made in the context of statutory immunity,  
4 which might give rise to a Kastigar hearing. Kastigar v. United  
5 States, 406 U.S. 441 (1972); see also 18 U.S.C. § 6002 et seq. The  
6 government can find only one case in which a Kastigar hearing was  
7 ordered following a competency evaluation. In United States v.  
8 Benson, the district court ordered a Kastigar hearing related to  
9 information obtained during a defendant's competency evaluation but  
10 acknowledged that it acted without reliance on any Ninth Circuit  
11 authority. No. 12-CR-00480-YGR-1, 2015 WL 1064738, at \*1 (N.D. Cal.  
12 Mar. 11, 2015). The government has been unable to find any other  
13 district or appellate court that has cited Benson, or reached a  
14 similar conclusion and, respectfully, submits Benson was incorrectly  
15 decided.

16           On the other hand, the Second Circuit's opinion in United  
17 States v. Stockwell is instructive in an analogous circumstance.  
18 743 F.2d 123 (2nd Cir. 1984). The Stockwell court refused to apply  
19 Kastigar to the subsequent use of statements made during a pre-trial  
20 psychiatrist's interview. Id. at 124. Stockwell involved a dispute  
21 over statements made by a defendant in the context of a sanity  
22 evaluation. Id. The court distinguished between evidence obtained  
23 from a defendant during a government psychiatric examination, which  
24 can be used in limited circumstances, with evidence obtained under a  
25 grant of immunity under 18 U.S.C. § 6002, which "cannot be used in  
26 any manner in a prosecution of the defendant." Id. at 127. In  
27 concluding that a Kastigar hearing was not warranted, the court  
28 stated, among other things, that reliance on the medical expert's

1 report of the results of the examination provided suitable  
2 protections against prosecutorial overreach. Id. That same logic  
3 applies to defendant's statements made during Dr. Goldstein's  
4 competency evaluation. Furthermore, the derivative use of  
5 defendant's statements, even if they did contain a discussion of the  
6 facts related to the instant charges, is not a significant concern  
7 here because defendant has already been indicted. Indeed, the  
8 government has already outlined its charges with specificity in the  
9 indictment and produced overwhelming evidence of defendant's guilt.  
10 Thus, there is no real risk of any derivative use from these  
11 statements.

12 Defendant should not be allowed to conceal statements made  
13 during a competency evaluation that he requested from consideration,  
14 especially given the topic involved, i.e., his understanding of the  
15 pending charges. As noted above, this topic goes directly to the  
16 factors this Court must weigh in ultimately determining his  
17 competency: whether defendant understands the charges and can assist  
18 his counsel in defending against them. The government seeks  
19 permission not to make use of those statements to establish his  
20 guilt, but rather to complete the record concerning his present  
21 ability to stand trial. If the Court finds that additional  
22 protections are warranted, the Court should order defendant to  
23 provide an unredacted report for in camera review.

### 24 **III. CONCLUSION**

25 For the reasons stated above, the government requests that the  
26 Court grant the government immediate access to the unredacted  
27 Goldstein report or, in the alternative, allow an unredacted version  
28 of the report to be shared with the government's neurologist, Dr.

1 Darby, and conduct an in camera review of the redactions to determine  
2 whether any privilege applies that prevents production to the  
3 prosecution.

4 Dated: June 21, 2023

Respectfully submitted,

5 E. MARTIN ESTRADA  
6 United States Attorney

7 MACK E. JENKINS  
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Chief, Criminal Division

9 /s/

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